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OFFICE OF PETITIONS

In re Application of :
Bennett et al. :
Application No. 09/934,639 : DECISION ON PETITION
Filed: August 22, 2001 : UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 1583 CIP 2 CON 2 :
:

This is a decision on the petition under 37 CFR 1.78(a)(3), filed August 1, 2005, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the prior-filed nonprovisional applications set forth in the amendment filed concurrently with the instant petition.

The petition is **DISMISSED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

- (1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application(s), unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

Further, as stated in 37 CFR 1.78(a)(2)(ii), the reference must be submitted during the pendency of the later-filed application. The instant application became abandoned for failure to timely reply to the Office action mailed June 10, 2003. A one-month extension of time under the provisions of 37 CFR 1.136(a) was obtained. Accordingly, this application became abandoned on August 11, 2003. A Notice of Abandonment was mailed December 24, 2003.

Accordingly, before the petition under 37 CFR 1.78(a)(3) can be granted, a petition to revive the instant application, along with a renewed petition under 37 CFR 1.78(a)(3), is required. A copy of the outstanding Office action and Notice of Abandonment are enclosed for petitioner's convenience.

The address given on the petition differs from the address of record. If appropriate, a request to change the address of record should be filed. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITIONS
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By fax: (571) 273-8300
ATTN: Office of Petitions

Any questions concerning this matter may be directed to the undersigned at (571) 272-3206.

Liana Chase
Liana Chase
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

cc: CARTER, DELUCA, FARRELL & SCHMIDT, LLP
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SUITE 225
MELVILLE, NY 11704

Enclosure: Notice of Non-Responsive Amendment (mailed June 10, 2003)
Notice of Abandonment (mailed December 24, 2003)